



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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Instruction Memorandum No. AK-300-2004-014
Expires: 09/30/2005

To: All AFS Employees
From: Manager, Alaska Fire Service
Subject: Employee Role in the Incident Contract Claim Process

Program Area: Incident Business Management

Purpose: This Instruction Memorandum (IM) provides basic information to incident personnel regarding Emergency Equipment Rental Agreement (EERA) and other emergency incident contract claims arising under the Contract Disputes Act of 1978.

Policy/Action: All incident personnel involved in the management of rented equipment, land or facilities have the potential to be involved with a contract claim and should implement the procedures outlined herein.

Time Frame: Effective Immediately

Background: This IM addresses concerns about the inconsistent handling of EERA contract claims. All contract claims are handled under the Contract Disputes Act of 1978. The Act establishes procedures and requirements for asserting and resolving claims subject to the Act. Incident personnel play a critical role in the results of a contract claim, therefore are required to follow the instructions in this IM when dealing with a potential or actual contract claim.

What is a Contract?

Contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services, and the buyer to pay for them. An example would be an Emergency Equipment Rental Agreement under which an order for services has been placed.

What is a Claim?

A **claim** is a written demand for a specific amount of money or other object of value, other than ordinary obligations incurred for services and supplies. For a more detailed definition of a claim see Federal Acquisition Regulation (FAR) part 33.2 and FAR clause 52.233-1 Disputes. All contract claims are settled under the Contract Disputes Act of 1978.

What is Negligence?

Negligence is failure to exercise that degree of care, which a careful and prudent (reasonable) person would exercise under similar circumstances.

Who has the authority to settle a Contract Claim?

A **federal Contracting Officer (CO)** is the only person authorized to settle a federal contract claim, up to the amount of their delegated warrant authority. Incident personnel have no authority to settle a contract claim, but do have a crucial role in the results of a contract claim by following the guidelines outlined in this memorandum.

Contractors filing a claim assume the burden for proving the Government was negligent and therefore caused the loss or damage. It is important that incident personnel provide the correct information to the claimant. Incident employees **shall not** advise, comment or in anyway solicit a contractor's claim. **The supervisor managing the equipment is responsible for documenting the damage and initiating the investigation.** This investigation **shall avoid conclusions and opinions and shall only present observations and facts.** The supervisor managing the equipment shall include the following information with the claim package and provide it to the Finance/Administration Section Chief, Procurement Unit Leader, or incident agency Contracting Officer:

- Description of the damage and circumstance leading to the damage; include location of the area, sequence of events, weather and terrain conditions.
- List of witnesses and witness statements
- Name of the supervisor managing the equipment and any other incident personnel that were involved in the direction of the equipment.
- Sketches, maps, diagrams or photographs of the scene or equipment.

All incident personnel will follow the steps below when dealing with a potential or actual contract claim:

- Provide the claimant with the information on how to file a claim. During an incident, the Finance/Administration Section Chief, Procurement Unit Leader or incident agency Contracting Officer can provide a form that may provide the

contractor additional information to assist in the submission of their claim. While there is no specific form to file a claim, it shall be in writing and include the following:

- Claimants complete name and address
- Signature of the equipment owner or legal representative
- Claimant's statement of facts concerning the damage
- Claimant's itemized listing of the amount claimed, including estimated value of equipment before damage.
- Witness statement if available.

Incident personnel:

- **shall not comment on the merits of the claim**
- **shall not refuse to accept a claim**, even if they feel it is fraudulent or has no basis
- **should never assume liability for damage on behalf of the United States, or state any opinion as to the merits of the claim.**

Submit claim packages to the Procurement office through the Zone Fire Management Officer, Division Chief, or Staff Officer. The claim package must include copies of the equipment rental agreement or other contractual document, emergency equipment shift tickets, equipment use records, inspection records, documentation from the equipment supervisor (see above), and any other information pertinent to the claim. Do not delay processing for the payment for actual equipment rental use, beyond a reasonable period, to obtain documentation needed to support the contractor's claim.

It is important that information regarding a claim include **all facts** in order to provide a clear and concise depiction of the incident. In an emergency incident situation, claim determination will be made after the incident is over and much of the information regarding conditions, as they existed at the time, may no longer be available. Additionally, personnel involved may no longer be available or may be unable to remember the events as they occurred. Therefore, it is vital to obtain information and document it as soon as possible after the incident occurs.

Contacts: For questions regarding contract claims please contact Procurement at (907) 356-5772.

Signed by:
Scott Billing
Manager

Authenticated by:
Shirley Goforth
Records

Attachment
Contract Claim (1 p)

CONTRACT CLAIM

To assist you in your decision to file a claim for damages incurred while your equipment was being used on the _____ Incident, you should review the situation, which lead up to the damages as it might relate to the Loss, Damage, or Destruction Clause.

If the damage did not occur due to ordinary wear and tear, or negligence of the Contractor or Contractor's agent you may decide to file a claim for the damage. The following is an outline to help you organize any claim filed so that it may be processed as quickly as possible.

1. A claim is a written demand for a sum certain, adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. See Federal Acquisition Regulation Clause 52.233-1 Disputes.
2. State your agreement number. In this case your number is: _____.
3. Describe the damage in detail.
4. Provide a detailed description of the events that led up to, and caused the damage.
5. Provide name, address, and phone numbers of all witnesses, and witness statements.
6. Give an estimate or the actual cost of repair for the damage.
7. State the reason(s) you feel the Government should make reimbursement for the damage.
8. Provide any other information that will support your claim, or will assist the Contracting Officer in determining liability for your claim.
9. Submit your claim to the following address:

Bureau of Land Management
Alaska Fire Service (Procurement)
P.O. Box 35005
Fort Wainwright, Alaska 99703

If you have any questions you may call the procurement office at (907) 356-5772.